



UNITED STATES ATTORNEY'S OFFICE

Southern District of New York

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FOR IMMEDIATE RELEASE
Thursday, February 16, 2012
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MANHATTAN U.S. ATTORNEY AND FBI ASSISTANT DIRECTOR-IN-CHARGE ANNOUNCE CHARGES AGAINST THREE INSURANCE AGENTS WHO ORCHESTRATED \$100 MILLION INSURANCE FRAUD SCHEME

Defendants Allegedly Deceived Insurance Companies into Issuing Stranger-Owned Life Insurance ("STOLI") Policies

Preet Bharara, the United States Attorney for the Southern District of New York, and Janice K. Fedarczyk, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation ("FBI"), today announced charges against MICHAEL BINDAY, the president and owner of a Scarsdale insurance agency, JAMES KEVIN KERGIL, an insurance agent based in Peekskill, New York, and MARK RESNICK, an insurance agent based in Orlando, Florida, in connection with a massive fraud scheme involving stranger-owned life insurance ("STOLI") policies. Specifically, the defendants are charged with conspiring to defraud major insurance companies into issuing life insurance policies valued at more than \$100 million to straw buyers, when the true beneficial owners of the policies were third-party investors and financiers. The defendants are also charged with obstructing justice during the investigation of the case. Earlier today, BINDAY voluntarily surrendered to authorities, and KERGIL and RESNICK were arrested. BINDAY and KERGIL were arraigned before U.S. Magistrate Judge Gabriel W. Gorenstein this afternoon, and RESNICK was arraigned in federal court in the Middle District of Florida.

Manhattan U.S. Attorney Preet Bharara said: "As alleged, these three insurance agents concocted an elaborate scheme, using straw buyers and third-party agents, to deceive life insurance providers into issuing policies to unintended beneficiaries. And when their scheme was unraveling, they allegedly sought to throw investigators off the trail by destroying documents and telling other individuals to lie. Their alleged actions victimized the companies that issued these policies, and hurt the grand jury process, and now they will be held accountable for their crimes."

FBI Assistant Director-in-Charge Janice K. Fedarczyk stated: "The defendants conspired to reap the benefits of a scheme that defrauded insurance companies and lined their own

pockets. But the insurers were not the only victims. Inevitably, insurance fraud results in higher costs to consumers. The FBI places a priority on insurance fraud because of its economic impact as well as the unjust enrichment.”

The following allegations are based on the Indictment unsealed today in Manhattan federal court:

The Insurance Fraud Scheme

American General Life Companies, Lincoln Financial Group, Security Mutual Insurance Company, Union Central Life Insurance, their subsidiaries, related entities, and affiliates (the “Life Insurance Providers”), issue life insurance policies. The Life Insurance Providers typically do not issue a policy if the applicant intends to resell it to a third-party investor, an arrangement which is typically referred to as stranger-owned life insurance, or STOLI, because the transaction would change the financial expectations of the Provider regarding the policy.

Between 2006 and 2011, BINDAY, KERGIL, and RESNICK participated in a scheme to defraud the Life Insurance Providers into issuing STOLI policies. They recruited elderly clients of modest means as “straw buyers” to apply for life insurance policies, promising them payment if the policies were issued and then resold. The straw buyers’ applications, which BINDAY submitted to the Life Insurance Providers, typically contained material misrepresentations regarding the straw buyers’ assets and net worths, their intent to resell their policies, and whether they had other life insurance policies or pending insurance applications. BINDAY, KERGIL, and RESNICK often used third-party financing to pay the policy premiums to the Life Insurance Providers. They then concealed the roles of the third-party investors by arranging to have funds transferred from the third parties to bank accounts controlled by, or in the names of, the straw buyers, so the Life Insurance Providers would believe the straw buyers were personally paying their policy premiums. The defendants also arranged for the policies to be resold on the secondary market. BINDAY, KERGIL, and RESNICK earned millions of dollars in commissions from their scheme, and even arranged to purchase STOLI policies from straw buyers for themselves to gain the benefits when the buyers passed away. In total, the scheme orchestrated by BINDAY, KERGIL, and RESNICK defrauded or attempted to defraud the Life Insurance Providers into issuing STOLI policies worth more than \$100 million.

Obstruction of Justice

BINDAY, KERGIL, and RESNICK also obstructed justice during the federal grand jury investigation of this case. Specifically, KERGIL and RESNICK conspired to destroy documents and electronic files between June 2010 and July 2010, and BINDAY directed a co-conspirator to tell clients to provide false information to investigators regarding life insurance applications.

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BINDAY, 48, of New York, New York, KERGIL, 57, of Peekskill, New York, and RESNICK, 56, of Orlando, Florida, each are charged with one count of conspiracy to commit mail and wire fraud, one count of mail fraud, and one count of wire fraud. KERGIL and RESNICK were also charged with conspiracy to obstruct justice, and BINDAY was charged with obstruction of justice. BINDAY, KERGIL, and RESNICK each face a total maximum sentence of 80 years in prison.

Mr. Bharara praised the investigative efforts of the FBI.

This case is being prosecuted by the Office's Complex Frauds Unit. Assistant U.S. Attorneys Zachary Feingold and Justina L. Geraci are in charge of this prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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